

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Pension Benefit Guaranty Corporation,

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Appellant,

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v.

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Oneida Ltd.,

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Appellee.

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100-38454
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MEMO ENDORSED
p.3

**JOINT MOTION TO STAY PROCEEDINGS PENDING AUTHORIZATION
TO PROCEED WITH DIRECT APPEAL TO COURT OF APPEALS**

Pursuant to 28 U.S.C. § 158(d)(2)(D), Oneida Ltd. (“Oneida”) and the Pension Benefit Guaranty Corporation (“PBGC”) (collectively, the “Parties”) jointly move the Court to stay all proceedings, including briefing, on PBGC’s Notice of Appeal,¹ pending the Court of Appeals’ determination whether to authorize a direct appeal under 28 U.S.C. § 158(d)(2)(A).

To advance judicial efficiency and avoid unnecessary proceedings pending the Court of Appeals’ determination, the Parties move this Court to stay all proceedings, including any filing of briefs that would otherwise be due.

I. FACTS

On March 21, 2008, the Bankruptcy Court entered an Amended Order² granting summary judgment to Oneida, holding that its ERISA pension plan termination premiums under 29 U.S.C. § 1306(a)(7) were discharged, pre-petition bankruptcy claims. On March 28, 2008, PBGC filed a

¹ Document #1 in this proceeding.

² Document #44 in the adversary proceeding, Case No. 06-01920, Bankr. S.D.N.Y.

Notice of Appeal³ with respect to that Amended Order. The Parties are jointly pursuing a direct appeal to the U.S. Court of Appeals for the Second Circuit.

II. DISCUSSION

The Parties jointly urge the Court to stay all proceedings on PBGC's Notice of Appeal pending a determination by the Court of Appeals whether to authorize a direct appeal under 28 U.S.C. § 158(d)(2)(A). This will promote judicial economy by maintaining the status quo pending a determination of the appropriate forum for the appeal, without affecting the confirmed plan of reorganization, the reorganized company, or any other entity.

This Court has the authority to grant a stay pending the Court of Appeals' determination.⁴ 28 U.S.C. § 158(d)(2)(D) provides that a direct appeal "does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal."

In the current circumstances, a stay will protect the rights of all parties in interest by eliminating the burden of litigating the appeal in the district court pending the Court of Appeals' determination. No entity will be harmed by a stay.

³ Document #45 in the adversary proceeding, Case No. 06-01920, Bankr. S.D.N.Y.; document #1 in this proceeding.

⁴ See Fed. R. Civ. Proc. 62.

III. MEMORANDUM OF LAW

Because the legal points and authorities upon which this motion rely are incorporated herein, the Parties respectfully request that the requirement of filing and serving a separate memorandum of law pursuant to Local Rule 7.1(a) be deemed satisfied.

IV. NO PRIOR REQUEST

Neither of the Parties has made any prior motion for the relief sought herein to this or any other court.

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<p><u>Stay granted while application</u> <u>is pending in the Court of Appeals</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>SO ORDERED: Date: <u>5/16/08</u></p>	<p> Richard M. Berman, U.S.D.J.</p>

V. CONCLUSION

The Parties respectfully request that the Court stay all proceedings, including any briefs that would otherwise be required, pending the Court of Appeals' determination whether to authorize a direct appeal.

Date: May 12, 2008
Washington, D.C.

GREG R. YATES
CHARLES G. COLE
STEPTOE & JOHNSON LLP
750 Seventh Avenue, Suite 1900
New York, NY 10019
(212) 506-3900 (telephone)
(212) 506-3950 (facsimile)

/s/ Lawrence F. Landgraff
ISRAEL GOLDOWITZ
Chief Counsel
KAREN L. MORRIS
Deputy Chief Counsel
JAMES L. EGGERMAN
PAULA J. CONNELLY
Assistant Chief Counsel
LAWRENCE F. LANDGRAFF (LL 8229)
ERIKA E. BARNES

PENSION BENEFIT GUARANTY
CORPORATION
Office of the Chief Counsel
1200 K Street, N.W.
Washington, D.C. 20005-4026
(202) 326-4020, ext. 6833 (telephone)
(202) 326-4112 (facsimile)
Email: eggeman.james@pbgc.gov and
efile@pbgc.gov

Attorneys for Appellant

Date: May 9, 2008
New York, New York

/s/ William J.F. Roll, III
William J.F. Roll, III
Douglas P. Bartner
Michael H. Torkin
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
(212) 848-4000 (telephone)
(212) 848-7179 (facsimile)

Attorneys for Appellee